

16-90073-jm  
December 22, 2016  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

-----X

In re  
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90073-jm

-----X

ROBERT A. KATZMANN, *Chief Judge*:

On July 6, July 20, and November 10, 2016, the Complainant filed a complaint and two supplemental complaints with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the “Rules”), charging a district judge of this Circuit (the “Judge”) with misconduct.

**BACKGROUND**

The Complainant filed an action in district court alleging that her former employer interfered with her ability to take leave under the Family and Medical Leave Act. The case was assigned to the Judge. Throughout the proceedings,

the Complainant repeatedly filed grievances against and sought to disqualify defense counsel, filing discovery material and confidential grievances on the public docket in contravention of the Judge's orders. The defendant moved to sanction the Complainant. At a hearing on the motion, after the Judge gave the Complainant a lengthy opportunity to explain her conduct, the Judge stated that her conduct was "abusive, it is inappropriate, and it's not going to be tolerated any longer." The Judge further stated: "All you're doing is trying to humiliate [defense counsel] . . . by publicly filing things on the docket. This docket will not be used, period, as a publicity machine for your allegations. It's not going to happen, period. Get back to the case. Get back to the merits of this case or it's going to be over." The Judge then imposed a monetary sanction against the Complainant for her "personal attacks and her improper docketing and invocation of confidential grievances" and her "abusive and irrelevant filings." The Judge denied the Complainant's request for reconsideration. The Judge subsequently granted summary judgment to the defendant without a hearing and denied the Complainant's request for reconsideration of that ruling.

The misconduct complaint alleges that the Judge: [i] became "visibly enraged, lost his temper, . . . became unprofessional," and was "erratic and

hostile” at the sanctions hearing, “terrify[ing]” the Complainant and causing her “acute psychological distress,” and that his “rage and anger” continued during the summary judgment proceedings; [ii] improperly sanctioned her, but refused to sanction the defendant; [iii] discriminated against her on the basis of her disability by denying a hearing on the summary judgment motion and imposing sanctions; [iv] refused to consider her arguments for reconsideration; and [v] deemed confidential her assertions regarding defense counsel’s alleged misconduct because of the Judge’s “antiquated Southern values,” allowing those values to prejudice his decision on sanctions.

The first supplemental complaint expands on the allegations of disability discrimination, citing to a news article about the sanctions award as well as online comments opining that the award was inappropriate and discriminatory, and alleges that the Judge has a “reputation for harsh sentences” and “controversial” decisions, citing to unrelated cases. It additionally alleges that the Judge failed to provide sufficient written support for his rulings regarding defense counsel, summary judgment, and sanctions, thus denying the Complainant a basis for appeal.

The second supplemental complaint focuses on allegations concerning the

Judge's "psychotic rage" during the proceedings, alleging that the Judge suffered from "psychotic breaks from reality" and "incoherent conversation [and] delusional thought." It provides numerous examples, including the Judge's inconsistent and improper rulings, "incoherent" instructions regarding the filing of a second amended complaint, failure to provide written decisions, false description of the Complainant's medical condition and other inaccurate statements of fact, inability to understand claims, refusal to hear facts and hold hearings, "angry tirade" regarding sanctions, and "hallucinat[ion]" that she intended to harass opposing counsel. The second supplemental complaint additionally alleges that the Judge retaliated against the Complainant by denying her access to the electronic case filing system and was prejudiced against her.

## **DISCUSSION**

The complaint is dismissed.

Many of the complaint's allegations seek to challenge the correctness of the Judge's various decisions and official actions in the underlying proceeding, including his rulings on sanctions, summary judgment, and reconsideration, as well as his alleged failure to issue adequate written opinions supporting his decisions. The complaints also contend that the Judge, in reaching his decisions,

refused to hold hearings and disregarded or misunderstood certain key facts. But what all of these allegations contend is that the Judge got it wrong, not that the Judge engaged in judicial misconduct. Accordingly, these allegations are dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”); 11(c)(1)(B); *see also In re Mem. Dec. Judicial Conference Comm. Judicial Conduct and Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008) (noting that “[t]he merits of a decision and the reasons given or not given for it are often inseparable,” and holding accordingly that “the giving or not giving of reasons for a particular decision, like the reasons themselves, should not be the subject of a misconduct proceeding”). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling.” Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

The allegations of disability discrimination, retaliation, bias, prejudice, and “psychosis” appear entirely derivative of the merits-related charges, but to the

extent these allegations are separate, they are wholly unsupported, and are therefore dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D); *see also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (“Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if he opens an investigation and the investigating body looks hard enough in a particular direction, he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible.”). A decision for or against a party does not evidence bias. Nor do several such decisions. Nor do third parties’ opinions about a decision.

The complaint also takes issue with the Judge’s demeanor during the proceedings. While a Judge should be “patient, dignified, respectful, and courteous” to litigants and lawyers, Code of Conduct for United States Judges Canon 3(A)(3), and while misconduct can include “treating litigants or attorneys in a demonstrably egregious and hostile manner,” Rule 3(h)(1)(D), the behavior at issue must “transcend[] the expected rough-and-tumble of litigation” in order to “move[] into the sphere of cognizable misconduct” under the Act, *Implementation*

*of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice*, 239 F.R.D. 116, 241 (September 2006); *cf. Liteky v. United States*, 510 U.S. 540, 555-56 (1994) (holding that “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display” do not establish bias or partiality).

The hearing transcript reveals that the Judge expressed frustration with the Complainant’s conduct and her insistence on publicly filing documents in direct contravention of the Judge’s orders. However, the transcript also reveals that the Judge gave the Complainant an opportunity to explain why her filings were relevant to her lawsuit, allowed her to address and defend her conduct, and repeatedly attempted to explain to the Complainant why her conduct was inappropriate. The transcript contains no suggestion whatsoever that the Judge became enraged or was hostile or unprofessional. While the Judge’s language conveyed impatience and was critical of the Complainant’s conduct, it is not uncommon for a judge to provide the parties with a blunt assessment of the judge’s views on the merits of their arguments. The Judge’s expressions of frustration do not “transcend[] the expected rough-and-tumble of litigation,” and

therefore do not constitute misconduct under the Act.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.